

Message Text

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TO AMCONSUL HONG KONG IMMEDIATE

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LIMDIS

E.O. 11652: N/A

TAGS: CGEN APER HK

SUBJECT: CONSULAR IMMUNITY

REF: HONG KONG 5787

1. REFTTEL REQUESTED LEGAL GUIDANCE ON APPROACH TO HKG IN FACE OF PLANNED PROSECUTION OF CONSULAR OFFICER ONDRUNK DRIVING CHARGE. CONGEN SOUGHT DEPARTMENT'S DETERMINATION AS TO WHETHER ACT OF DRIVING HOME FROM CONGEN ON HONG KONG HOLIDAY QUALIFIES AS "CONSULAR FUNCTION" THE EXERCISE OF WHICH WOULD CLOTHE OFFICER WITH IMMUNITY FROM RECEIVING STATE JURISDICTION.

2. CONGEN CITED PERTINENT PORTIONS OF HKG CONSULAR RELATIONS ORDINANCES UNDER WHICH "CONSULAR OFFICERS ARE NOT AMENABLE TO JURISDICTION IN RESPECT TO ACT PERFORMED IN THE LIMITED OFFICIAL USE

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EXERCISE OF THEIR CONSULAR FUNCTIONS." THIS LANGUAGE

TRACKS THAT OF ARTICLE 43 OF THE VIENNA CONVENTION ON
CONSULAR RELATIONS OF 1963 WHICH CODIFIES THE MOST WIDELY-
ACCEPTED RULE OF INTERNATIONAL LAW ON CONSULAR PRIVILEGES
AND IMMUNITIES. IN DEPARTMENT'S VIEW SPECIFIC PROVISION
ON SCOPE OF CONSULAR IMMUNITY DOES NOT, AS A GENERAL RULE,
EXTEND TO DRIVING ACTIVITIES. THIS CONCLUSION IS

PARTICULARLY PERTINENT IN THE CASE OF DRIVING FOR PERSONAL
REASONS. IF DEPARTMENT WERE CALLED UPON TO CERTIFY
IMMUNITY OF FOREIGN CONSULAR OFFICER IN U.S. BASED UPON
DRIVING OFFENSE, IT IS MORE THAN PROBABLE THAT SUCH A
CERTIFICATION WOULD BE REFUSED.

3. WHILE DEPARTMENT HAS NO OBJECTION HKG'S EXTENSION OF
IMMUNITY TO OFFICER IN CHARGE OR ANY EFFORTS ON PART OF
CONGEN TO ACHIEVE THIS END, EITHER FORMALLY THROUGH
EXISTING PROCEDURES BASED ON HKG LAW AND PRACTICE, OR
INFORMALLY THROUGH OTHER CHANNEL. DEPARTMENT CANNOT
SANCTION DEMAND FOR IMMUNITY BASED UPON PREVAILING
INTERNATIONAL LAW IN VIEW OF DEPARTMENT'S READING OF
PROPER APPLICATION OF RELEVANT RULES.

4. DEPT OF COURSE HOPES THAT HKG WILL BE WILLING TO STOP
COURT ACTION. WE LEAVE TO YOUR DISCRETION THE WAY TO
HANDLE MATTER WITH HKG, BUT ASSUME THAT IF THERE HAS NOT
BEEN PROSECUTION IN PAST FOR ANY ROUGHLY COMPARABLE
OFFENSES BY FOREIGN CONSULAR OFFICERS, THIS WOULD BE
USEFUL POINT.

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